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October, 23, 2002

Via Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-B204
Washington, DC 20554

Re: Notice of Ex Parte Presentation: In the Matter of the 1993, 1994 and 1996 Annual
Access Tariff Filings, CC Docket No. 93-193 and 94-157.

Dear Ms. Dortch:

Yesterday, Safir Rammah, Paul Malandrakis and I met with Tamara Preiss, Jeff Dygert, Judy Nitsche, Jay Atkinson and Aaron Goldschmidt of the Wireline Competition Bureau. We urged the Division to take immediate action on these outstanding, one-time, exogenous cost issues that represent approximately \$200M in switched access overcharges. We used the attached as an outline for our discussion.

Consistent with the Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the proceedings.

Sincerely,

A handwritten signature in black ink that reads "Patrick H. Merrick".

Attachment

cc: Tamara Priess
Jeff Dygert
Judy Nitsche
Jay Atkinson
Aaron Goldschmidt

ISSUE 1 - Bell Atlantic's Retroactive Inclusion of OPEB Expenses in Development of its Exogenous Costs

- In its SFAS 106 Adoption Order (December 1990) the Commission ordered the LECs to adopt SFAS 106, an accounting methodology that changed how LECs book their OPEB costs, "no later than" January 1, 1993.
- The Commission expressly ruled that carrier adoption of SFAS 106 before its mandatory effective date would not qualify for exogenous treatment. (AT&T Revisions to Tariff F.C.C. Nos. 1, 2 and 13, 5 FCC Rcd., 1990, ("AT&T SFAS 106 Order").
- In its 1993 Annual Filing Bell Atlantic filed for exogenous treatment of its OPEB costs retroactive to January 1, 1991. Bell Atlantic was the only LEC to make such a claim in its 1993 annual filing.

ISSUE 1 - Bell Atlantic's Retroactive Inclusion of OPEB Expenses in Development of its Exogenous Costs

- Under the Commission's guidelines for exogenous cost treatment, the cost must be outside the LEC's control for exogenous cost treatment (CC Docket No. 87-313, 2nd Report and Order, released Oct. 4, 1990, para. 166).
- Bell Atlantic's adoption of the SFAS 106 accounting change for OPEB costs on January 1, 1991, was (1) a purely voluntary decision of the carrier and not outside its control, and (2) in violation of the Commission's rule that carrier adoption of SFAS 106 before its mandatory effective date would not qualify for exogenous treatment.
- As a result, Bell Atlantic cannot claim exogenous treatment for OPEB costs from January 1, 1991 through January 1, 1993 amounting to \$39.6M (\$37.6M during the 1993/94 tariff period and \$2.0M during 1994/95 rate period).
- The Commission included this issue in its "Order Designating Issues for Investigation" released June 30, 1995, CC Docket No. 94-157, Issue B, Para. 19.



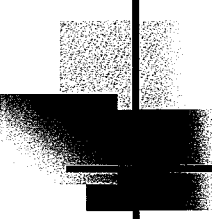
ISSUE 2 - LECs' Inconsistent Application of "Add-Back" Rule to Determine Sharing Amounts

- In 1993 and 1994, none of the Commission's rules or Orders regarding rate-of-return, sharing, or lower formula adjustment calculations allowed LECs to "add-back" prior years lower formula adjustment or sharing amounts to calculate their current lower formula adjustment or sharing amounts.
- In their 1993 and 1994 Annual Filings NYNEX and SNET included "add-back" of prior years lower formula adjustment (LFA) amounts to calculate their current sharing obligations. In other words, these LECs removed their prior years LFA amounts from their revenues to compute their interstate rate of return.
- The result of these adjustments was a decrease to both the LEC's rate-of-return and sharing obligations in their 1993 and 1994 annual filings. \$35.6M for NYNEX and by \$2.2M for SNET.



ISSUE 2 - LECs' Inconsistent Application of "Add-Back" Rule to Determine Sharing Amounts

- AT&T's intervention petitions of 1993 and 1994 requested the Commission to either disallow NYNEX and SNET's decrease in rate-of-return and sharing due to "add-back" *or* require all price cap LECs to "add-back" their prior years sharing amounts in their current year sharing calculation.
- In its 1993 Annual Filing Investigation Order, the Commission stated that "AT&T raises an issue which applies to all LECs that had a sharing amount or low end adjustment based on 1991 earnings ...we suspend the affected tariffs for one day, impose an accounting order, and initiate an investigation pertaining to all LECs that had a sharing amount or low-end adjustment last year." (CC Docket 93-193, released June 23, 1993).



ISSUE 3 - LECs' Understatement of Sharing Obligations Due to the Impact of RAO 20.

- In 1992 the Common Carrier Bureau issued a directive to carriers, RAO 20, providing accounting and ratemaking instructions for OPEB.
- RAO 20 directed carriers to exclude unfunded accrued OPEB costs from their interstate rate base.
- On March 7, 1996, the Commission rescinded the rate base portion of RAO 20 after concluding the CCB's directions had exceeded the scope of its delegated authority.
- In the 1996 Annual Filing, a majority of the LECs responded to the RAO 20 Rescission Order by restating their rate bases to include OPEB costs for current and past years.
- This increase in rate bases resulted in a decrease to LECs rate-of-returns and, subsequently, a decrease in their sharing obligations amounting to \$85.1M for 1994, \$30.2M for 1993, and \$4.1M for 1992.



ISSUE 3 - LECs' Understatement of Sharing Obligations Due to the Impact of RAO 20.

- The Commission, in its MO&O, DA 96-1022, released June 24, 1996 stated that "contrary to the LECs view, we are not persuaded at this point that the RAO 20 Rescission Order requires them to include OPEB costs in the rate base, or, that it would be consistent with the current rules for them to do so."
- AT&T would like for the Commission to rule on this long outstanding issue, particularly in view of the fact that the Commission has adopted the reasoning and directives of RAO 20 on a prospective basis in a subsequent Order.
- The Commission stated in its MO&O, DA 96-1022, released June 24, 1996 that it would include this issue as part of its investigation for CC Docket No. 93-193.